

The Commission in that Order also stated that although the service providers also have to follow the rules and regulations, those are with regard to "the supported service, and as such, must provide the services approved for funding within the relevant funding year. The service provider is required under our rules to provide beneficiaries a choice of payment method, and, when the beneficiary has made full payment for the services, to remit discount amounts to the beneficiary within twenty days of receipt of the reimbursement check. But in many situations, the service provider simply is not in a position to ensure that all applicable statutory and regulatory requirements have been met. Indeed, in many instances, a service provider may well be totally unaware of any violation. In such cases, we are convinced that it is both unrealistic and inequitable to seek recovery solely from the service provider." (Emphasis added). *Id.* at par. 11.

3. All Revised Funding Commitment Letters, Funding Commitment Adjustment Reports issued by USAC with respect to Form 471 Application Number 307730 and the FRNs subsequent to May 2, 2006 when the FCC in Proceeding FCC-06-05 adopted an Order under CC Docket No. 02-6 are invalid because the USAC failed to comply with the requirements of that Order.

As set forth in the Fact section above, the FCC on May 2, 2006 adopted in Proceeding FCC-06-05, (released May 19, 2006) an Order under CC Docket No. 02-6, finding that the "USAC denied the requests for funding without sufficiently determining that the service providers improperly participated in the applicant's bidding process." (Page 3 ¶6 of the Order). It further ordered the USAC to "Complete its review of each remanded application (and issue an award or a denial based on a complete review and analysis) listed in the Appendix no later than 120 days from the release of this Order." (Page 4 ¶7 of the Order). Application 307730, which relates to the FRNs, was listed in the Appendix. That being the case, the CAL and the FCARs are fatally flawed because more than 120 days have expired since the FCC issued its Order. The USAC has neither obtained an extension of the deadline in the Order, nor has it issued an award or denial of Application 307730 within the FCC ordered 120 day period. At this late date the USAC is barred by the terms of the FCC order and estoppel from raising any alleged "improper" procurement issues concerning Application 307730 or the related FRNs.

4. The CAL and the related FCARS are unenforceable and void as a matter of law since the USAC's procrastination and delays in prosecuting any alleged violations has taken it well past any applicable Statute of Limitations.

5. The USAC's attempt to base any FCAR on an alleged "applicant's request of June 20, 2006" whereby the FRNs were "cancelled in (their) entirety", of which ICM had no knowledge of or an opportunity to refute, is a violation of ICM's right of due process. To allow such a violation would enable the applicant to have received goods and services

Letter of Appeal
Schools and Libraries Division
June 27, 2011
Page 6 of 6

furnished by ICM in good faith and then by a unilateral agreement with the USAC effectively bar ICM for receiving payment for those goods and services.

CONCLUSIONS

For the reasons set forth above, the SLD should grant this appeal and make a determination that:

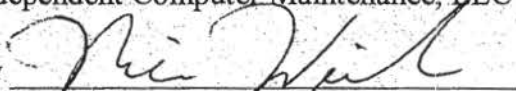
1. The CAL and the attached FCAR reports should be withdrawn because on their face they offer an unclear, vague, ambiguous and incomplete basis for reducing the FRN commitments; and
2. In the event there was any improper actions with respect to Application 307730 and the associated FRNs, such actions were those of KCA and other third parties and it is those parties to which USAC should direct its recovery efforts and not against ICM which was and is an innocent service provider; and
3. All actions by the USAC to deny or reduce funding with respect to Application 307730 and the associated FRNs subsequent to May 2, 2006 when the FCC in Proceeding FCC-06-05 adopted an Order under CC Docket No. 02-6 are invalid because the USAC failed to comply with the requirements and provisions of that Order; and
4. The CAL is unenforceable as a matter of law since the USAC's procrastination and delays in prosecuting any alleged violations has taken it well past any applicable Statute of Limitations; and
5. The USAC's attempt to base any FCAR on an alleged "applicant's request of June 20, 2006" of which ICM had no knowledge of or an opportunity to refute, is a violation of ICM's right of due process.

If you have any further questions concerning this matter, please contact the undersigned or our Counsel, Gary Marcus of the law firm, Gary Marcus, Attorney at Law, P.C. 7657 Uliva Way, Sarasota, FL 34238. (516) 301-7776.

Very truly yours,

Independent Computer Maintenance, LLC

By


Meir Weinraub, Vice President

Enclosure

A



Schools & Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2002: July 1, 2002 - June 30, 2003

May 4, 2011

Anthony Natoli
Independent Computer Maintenance, LLC
1037 Route 46 East
Clifton, NJ 07013

Re: SPIN: 143026575
Service Provider Name: Independent Computer Maintenance, LLC
Form 471 Application Number: 307730
Funding Year: 2002
FCC Registration Number:
Applicant Name KEARNY CHRISTIAN ACADEMY
Billed Entity Number: 227328
Applicant Contact Person: DAVID MANZO

Our routine review of Schools and Libraries Program funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust the overall funding commitment. The purpose of this letter is to make the required adjustments to the funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the service provider is responsible for all or some of the program rule violations. Therefore, the service provider is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. If you wish to appeal the Commitment Adjustment Decision indicated in this letter, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
 - Form 471 Application Number,
 - Billed Entity Number, and
 - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.
To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Rd.
P. O. Box 902
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to the applicant for informational purposes. If USAC has determined the applicant is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the applicant detailing the necessary applicant action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or the applicant(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds the Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the service provider is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: DAVID MANZO
KEARNY CHRISTIAN ACADEMY

Funding Commitment Adjustment Report
Form 471 Application Number: 307730

Funding Request Number:	799828
Contract Number:	10685
Services Ordered:	INTERNET ACCESS
Billing Account Number:	
Original Funding Commitment:	\$35,775.00
Commitment Adjustment Amount:	\$35,775.00
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$35,775.00
Funds to be Recovered from Service Provider:	\$35,775.00

Funding Commitment Adjustment Explanation:

On May 19, 2006, the FCC released order FCC 06-55 remanding this application back to USAC for further consideration. Pursuant to the applicants request of June 20, 2006, the funding commitment for FRN 799828 was cancelled in its entirety. Since the FCC rules require that the USAC recover funds that were disbursed over the commitment, USAC will seek recovery of any disbursed funds from the service provider.

Funding Request Number:	799843
Contract Number:	10686
Services Ordered:	INTERNET ACCESS
Billing Account Number:	
Original Funding Commitment:	\$11,448.00
Commitment Adjustment Amount:	\$11,448.00
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$11,448.00
Funds to be Recovered from Service Provider:	\$11,448.00

Funding Commitment Adjustment Explanation:

On May 19, 2006, the FCC released order FCC 06-55 remanding this application back to USAC for further consideration. Pursuant to the applicants request of June 20, 2006, the funding commitment for FRN 799843 was cancelled in its entirety. Since the FCC rules require that the USAC recover funds that were disbursed over the commitment, USAC will seek recovery of any disbursed funds from the service provider.

Enclosure B



Kearny Christian Academy
A Ministry of City of Hope Int'l Church
151 Midland Avenue, Kearny, New Jersey 07032
(201)997-0588 (201)997-1576 (fax)
www.cohic.com

July 24, 2003

We are requesting an operational SPIN change for the following:

Billed entity number: 227328
Applicant name: KEARNY CHRISTIAN ACADEMY
Funding request number: 799903
Form 471 application number: 307730
Applicant contact: David Manzo
Applicant Phone: (201) 998-9460
Applicant E-mail address: N/A
Original SPIN: 143024755
Original service provider: Diversified Computer Solutions, Inc.
Original service provider contact: Benty Gill
Original service provider phone: (973) 598-0424
Original service provider E-mail address: bgill@dcssupport.com
New SPIN: 143026575
New service provider: Independent Computer Maintenance LLC
New service provider contact: Anthony Natoli
New service provider phone: (973) 916-1800
New service provider E-mail address: tonyn@icmcorporation.com
Proposed effective date of the SPIN change: July 24, 2003

I certify that (1) all SPIN changes requested in this letter are allowed under all applicable state and local procurement rules, (2) the SPIN changes are allowable under the terms of the contract, if any, between the applicant and its original service provider, and (3) the applicant has notified its original service provider of its intent to change service providers.

Thank you for your attention to this matter.

David Manzo

**Kearny Christian Academy***A Ministry of City of Hope International Church*

172-174 Midland Avenue, Kearny, New Jersey 07032

(201) 998-0788 (201) 998-1102 (fax)

www.kcaweb.com

September 26, 2003

We are requesting an operational SPIN change for the following:

Billed entity number: 227328

Applicant name: KEARNY CHRISTIAN ACADEMY

Funding request numbers: ~~799828-799843~~, 799881

Form 471 application number: 307730

Applicant contact: David Manzo

Applicant Phone: (201) 998-9460

Applicant E-mail address: N/A

Original SPIN: 143024755

Original service provider: Diversified Computer Solutions, Inc.

Original service provider contact: Benty Gill

Original service provider phone: (973) 598-0424

Original service provider E-mail address: bgill@dcssupport.com

New SPIN: 143026575

New service provider: Independent Computer Maintenance LLC

New service provider contact: Anthony Natoli

New service provider phone: (973) 916-1800

New service provider E-mail address: tonyn@icmcorporation.com

Proposed effective date of the SPIN change: July 1, 2002

I certify that (1) all SPIN changes requested in this letter are allowed under all applicable state and local procurement rules, (2) the SPIN changes are allowable under the terms of the contract, if any, between the applicant and its original service provider, and (3) the applicant has notified its original service provider of its intent to change service providers.

Thank you for your attention to this matter.

David Manzo
Technology Director

Enclosure C

TONY NATOLI

From: "SLDClient Operations" <SLDClientOperations@sl.universalservice.org>
To: <Tonyn@icmcorporation.com>
Sent: Tuesday, August 12, 2003 2:03 PM
Subject: E-Rate Program/Confirmation of SPIN Change/FRN 799903

A request to change/correct the Service Provider on the following Funding Request(s) (FRN) was granted.

As the new Service Provider, you will receive a Funding Commitment Decision Letter (FCDL). PLEASE NOTE: While this FCDL will contain more detailed information on the FRN(s) listed below, it will show the ORIGINAL COMMITMENT amount, rather than the amount that remains undisbursed for this FRN.

THIS E-MAIL IS FOR ADVISORY PURPOSES ONLY. REPLIES WILL NOT BE RECEIVED. IF YOU HAVE QUESTIONS REGARDING THE SUBJECT OF THIS ADVISORY E-MAIL, PLEASE CALL OUR CLIENT SERVICE BUREAU AT 1-888-203-8100.

Applicant:

KEARNY CHRISTIAN ACADEMY

172 MIDLAND AVE

KEARNY, NJ 07032

Contact: DAVID MANZO Phone: (201) 998-9460

Form 471 Application Number: 307730

Funding Request No. (FRN): 799903

New Service Provider: Independent Computer Maintenance, LLC

New SPIN: 143026575

Original Commitment Amount: \$52,470.00

Disbursement Amount: \$0.00

CAP Remaining: \$52,470.00

Date of Change: 8/5/03

A Form 486 has been filed for this FRN: Yes

This FRN includes Non-Recurring Services: Yes

TONY NATOLI

From: "SLDClient Operations" <SLDClientOperations@sl.universalservice.org>
To: <TonyN@icmcorporation.com>
Sent: Wednesday, October 08, 2003 9:28 AM
Subject: E-Rate Program/Confirmation of SPIN Change/FRN 799828, 799843

A request to change/correct the Service Provider on the following Funding Request(s) (FRN) was granted.

As the new Service Provider, you will receive a Funding Commitment Decision Letter (FCDL). PLEASE NOTE: While this FCDL will contain more detailed information on the FRN(s) listed below, it will show the ORIGINAL COMMITMENT amount, rather than the amount that remains undisbursed for this FRN.

THIS E-MAIL IS FOR ADVISORY PURPOSES ONLY. REPLIES WILL NOT BE RECEIVED. IF YOU HAVE QUESTIONS REGARDING THE SUBJECT OF THIS ADVISORY E-MAIL, PLEASE CALL OUR CLIENT SERVICE BUREAU AT 1-888-203-8100.

Applicant:

KEARNY CHRISTIAN ACADEMY
172 MIDLAND AVE
KEARNY, NJ 07032

Contact: DAVID MANZO Phone: (201) 998-9460
Form 471 Application Number: 307730

Funding Request No. (FRN): 799828

New Service Provider: Independent Computer Maintenance, LLC

New SPIN: 143026575

Original Commitment Amount: \$35,775.00

Disbursement Amount: \$0.00

CAP Remaining: \$35,775.00

Date of Change: 9/30/03

A Form 486 has been filed for this FRN: Yes

This FRN includes Non-Recurring Services: Yes

Funding Request No. (FRN): 799843

New Service Provider: Independent Computer Maintenance, LLC

New SPIN: 143026575

Original Commitment Amount: \$11,448.00

Disbursement Amount: \$0.00

CAP Remaining: \$11,448.00

Date of Change: 9/30/03

A Form 486 has been filed for this FRN: Yes

This FRN includes Non-Recurring Services: Yes

Enclosure D



INDEPENDENT COMPUTER MAINTENANCE LLC

SALES • COMMUNICATIONS • CONSULTING • VOICE & DATA SOLUTIONS

www.icmcorporation.com

INDEPENDENT COMPUTER MAINTENANCE, LLC

1037 Route 46 East, Suite C102

Clifton, NJ 07013

January 7, 2005

By Fax: 202-418-0187
and Federal Express

Letter of Appeal
Federal Communications Commission
Office of the Secretary
445 - 12th Street, S.W.
Washington, DC 20554

REQUEST FOR REVIEW

Re: APPEAL OF (1) COMMITMENT ADJUSTMENT LETTER
AND (2) SUBSEQUENT DENIAL OF SAID APPEAL BY
THE SCHOOLS AND LIBRARIES DIVISION OF THE
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
CC DOCKET NO.: 02-6
FUNDING YEAR: 2002 Through 2003
FORM 471 APPLICATION NUMBER: 307730
APPLICANT NAME: Kearny Christian Academy
APPLICANT CONTACT: David Manzo
BILLED ENTITY NAME: Kearny Christian Academy
BILLED ENTITY NUMBER: 227328
BILLED ENTITY AND APPLICANT
CONTACT PHONE NO. (201) 998-9460
SERVICE PROVIDER: Independent Computer Maintenance, LLC
SERVICE PROVIDER IDENTIFICATION NO.: 143026575
SERVICE PROVIDER CONTACT PERSON: Anthony Natoli
SERVICE PROVIDER CONTACT PHONE NO.: 973-916-1800
SERVICE PROVIDER FAX NO.: 973-916-1986
SERVICE PROVIDER E-MAIL:
TONYN@ICM CORPORATION.COM

Enclosure 1: Copy of Administrator's Decision on Appeal -
Funding Year 2002-2003 for Kearny Christian
Academy dated November 16, 2004.

Enclosure 2: Copy of Independent Computer Maintenance, LLC
Appeal of Commitment Adjustment -
Funding Year 2002-2003 for Kearny Christian
Academy dated May 12, 2004.

Enclosure 3: Copy of FCC Decision entitled "In Re

Since 1985

Letter of Appeal
Federal Communications Commission
Office of the Secretary
January 7, 2005
Page 2

**Federal-State Joint Board of Universal Service,
et al;” adopted on July 23, 2004.**

Gentlemen:

NOTICE OF APPEAL

Please accept this letter and its enclosures as Independent Computer Maintenance, LLC's ("ICM") appeal of the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") Administrator's Decision on Appeal - Funding Year 2002-2003, dated November 16, 2004. Said decision denied in full ICM's appeal of USAC's Commitment Adjustment Letter dated March 16, 2004, which letter rescinded in full the Funding Request Numbers ("FRNs") set forth below. A copy of USAC's Administrator's Decision on Appeal - Funding Year 2002-2003 dated November 16, 2004, is annexed hereto as Enclosure 1. A copy of ICM's Appeal to the USAC, and its enclosures, is annexed hereto as Enclosure 2.

FACTS

By a Commitment Adjustment Letter dated March 16, 2004, USAC advised ICM that, under the above-referenced Form Application Number, the commitment amount for the following FRN's are "rescinded in full" and requested the recovery of the funds to the extent indicated below:

<u>Funding Request Number ("FRN")</u>	<u>Requested Recovery</u>
779828	\$ 35,775.00
799843	\$ 11,448.00
779903	\$ - 0 -

The USAC's March 16, 2004 Commitment Adjustment decision was justified by USAC because:

Letter of Appeal
Federal Communications Commission
Office of the Secretary
January 7, 2005
Page 3

“SLD found similarities in Forms 470 and Technology Plans among the applicants associated with this vendor. This indicates that the vendor was improperly involved in the competitive bidding process. As a result, the commitment amount is rescinded in full.” (Emphasis added) (A copy of the March 16, 2004 Commitment Adjustment Letter is annexed as Enclosure A of Enclosure 2.)

On May 12, 2004, ICM submitted its Letter of Appeal with respect to the aforesaid Commitment Adjustment Letter citing a number of reasons why the proposed Commitment Adjustment was improper and wrong, including the fact that ICM had no contact with the applicant, Kearny Christian Academy, during the period the Form 470 and Technology Plan in question was prepared or filed. By letter dated November 16, 2004, the USAC issued an Administrator's Decision of Appeal - Funding Year 2002-2003, denying in full ICM's appeal.

The Administrator's Decision of Appeal - Funding Year 2002-2003 cites the following reasons for its rejection of ICM's appeal:

“It has been determined that the applicant documentation that was submitted to SLD during the course of the Item 25 Selective Review process indicates that similarities in the Form 470: 756960000401729 and technology plan exist. During the course of the appeal review, it was determined that the applicants' form identifier is the Form 470 number, standard services are sought for each service category, service or function and quantity and/or capacity is written in all capital letters. Upon review of the Item 25 documentation that was submitted, it was determined that identical language exists for all six competitive questions, the template fax back has identical wording in what appears to be the same handwriting, and the template technology plan has identical wording and format. Based upon this documentation, it was determined that similarities exist within the Form 470 and technology plan which indicate that the original vendor, Diversified Computer Solutions, Inc., was improperly involved in the competitive bidding process. Consequently, the appeal is denied in full.” (Emphasis added)

While ICM was apparently successful in dispelling the reason USAC originally rescinded in full the FRNs, to wit, that ICM “was improperly involved in the competition bidding process,” the Administrator only modified the original finding to find that there was an indication that the

Letter of Appeal
Federal Communications Commission
Office of the Secretary
January 7, 2005
Page 4

prior vendor, not ICM, was "improperly involved in the competitive bidding process" and rejected ICM's appeal on that basis.

Notwithstanding the fact that ICM was apparently successful in convincing the Administrator that the critical fact USAC based its prior decision on was wrong and ICM was not improperly involved in the competitive bidding process, the damage to ICM of rescinding in full the FRNs remained intact. This determination by the Administrator must be reversed because 1) it was clearly arbitrary and capricious 2) it fails any test of adequate due process, 3) it was decided based upon assumption, consequential evidence and conjecture, and 4) it is not supported by any factual determinations as well as the fact that it violates the holding and directive of the FCC contained in *In re Federal-State Joint Board on Universal Service*, 19 FCC Rcd 15252, adopted by the FCC on July 23, 2004. [hereinafter *In re Federal-State*]. On November 23, 2004, ICM requested the SLD to reconsider its decision based upon *In re Federal-State* holding.

ARGUMENTS

1. These determinations by the Universal Services Administrative Company ("USAC") were founded upon assumptions which had no basis in fact and were made in the absence of sufficient information. Since the bases of USAC's were founded on mere assumption, consequential evidence, and conjecture, the Administrator's Decision was arbitrary and capricious. In particular these determinations were wrong for the following reasons:

A. As stated in ICM's appeal of the Commitment Adjustment Letter dated May 12, 2004, ICM had obtained from the USAC website a copy of the Form 470 or had requested and received from Kearny Christian Academy, a copy of the Form 470 and technology plan that are at issue in this appeal. In addition, ICM had requested and received other Forms 470 and technical plans associated with other Form 471 Application Numbers being questioned by other Commitment Adjustment Letters. ICM compared the Form 470 and technology plan at issue in this appeal with other Form 470 and technology plans which are the subject matter of other Commitment Adjustment Letters received by ICM. A review of these Forms 470 indicated that the Form 470 is a standard form with a few spaces to be completed by the applicant. The form itself is obviously identical to all other Forms 470 and a detailed analysis of the applicant completed sections of the Form 470 at issue in this appeal verses the Forms 470 at issue in the other Commitment Adjustment Letters indicates that the Forms, while being similar, are certainly not identical in all respects. Furthermore, in all likelihood comparing these Forms 470 to any other Forms 470 would yield similar results.

With respect to the technology plans, ICM compared the technology plan at issue in this appeal with the other technology plans being questioned by other Commitment

Adjustment Letters received by ICM. Again, while the plans are similar, they all appear to be based upon information and sample technology plans ("Sample Technology Plans") that were available on the E-Rate Central website (www.e-ratecentral.com). Attached to ICM's May 12, 2004 Appeal, as Enclosure D, was a copy of a technology plan that is the subject matter of this appeal and as Enclosure E a copy of Sample Technology Plans that was printed from the E-Rate Central website. While there are some differences in the technology plans, they are all substantially similar to each other and the Sample Technology Plans. While ICM has no knowledge concerning the preparation of the technology plan at issue in this appeal, it is clear that Kearny Christian Academy very likely accessed the E-Rate Central website and utilized the website as a basis for the preparation of its technology plan, as apparently did other applicants thereby yielding technology plans that are similar. To draw a conclusion that ICM, Diversified Computer Solutions, Inc., or any other party "was improperly involved in the competitive bidding process" from such circumstantial and unconvincing evidence is a harsh leap of faith that cannot be justified in this forfeiture case where the continued existence of ICM is at stake.

B. Although ICM was successful in convincing the Administrator that not only was it not "improperly involved with the competitive bidding process", and that alone should have been ample basis for rescinding the Commitment Adjustment Letter, the Administrator seems to ignore the reversal of this vital factual issue, and then denies the appeal based on evidence that was never considered in the prior appeal.

For the first time, in the Administrator's decision, it is indicated that the Administrator has reviewed "applicant documentation that was submitted to SLD during the course of the Item 25 Selective Review process". Not only did the original Commitment Adjustment Letter fail to mention this evidence, but again this was a process of which ICM had no connection with whatsoever, and had no knowledge concerning the documents that may have been filed or considered in connection with that review.

The fact that the Administrator considered this review and related documents without giving ICM notice of this new or additional evidence and a right to review it and comment or refute it, is an unconscionable violation of Due Process. "The Due Process Clause provides that certain substantive risks - - life, liberty and property - - cannot be deprived except pursuant to constitutionally adequate procedures." *Cleveland Board of Education v. Loudermill, et al.* 470 U.S. 532, 541 (1985). These procedures would include notice of the evidence and a right to be heard concerning that evidence. In this matter, the Administrator considered new or different evidence than was considered as the basis for issuing the Commitment Adjustment Letter, without notice to ICM or a right for ICM to contest that new evidence. This was a fundamental violation of ICM's right of Due Process. This Commission has held that "submission of new evidence following a funding commitment decision letter is permitted only under limited circumstances". *In re Atlantic City Public School District*, 17 FCC Rcd 25186, 25189 on December 16, 2002.

To make matters worse, this proceeding, in its essence, is an attempt to recover funds from ICM and, therefore, is an attempt to enforce a forfeiture of ICM's property. If any civil proceeding deserves the procedural safeguards of Due Process, it is a forfeiture proceeding. This Commission cannot expect a small business like ICM, which is being faced with financial ruin if it cannot reverse these commitment adjustments, to adequately defend its position when the USAC, on deciding its appeal, considers new evidence that ICM had no notice of or for that matter had any knowledge of whatsoever. Based upon this total lack of both substantive and procedural due process, this Commission must grant this Appeal, rescind the Commitment Adjustment Letter, and reinstate all commitment amounts in full.

C. The proposed commitment adjustments should be reversed on equitable grounds. ICM, which by the USAC's own admission, had nothing to do with any alleged improprieties in the competitive bidding process is being asked to bear the brunt of some other entity's alleged improper acts. If these proposed commitment adjustments remain as proposed, ICM will have rendered non-recoverable goods and services and have effectively received no compensation for its efforts which it rendered in accordance with its contractual commitments. On the other hand, an applicant who may have been a party to an improper competitive bidding procedure will have received goods and services and have incurred no costs for their acquisition. This would be a gross injustice where an innocent party is punished and a culpable party receives an undeserved benefit. This Commission has, in the past, reviewed the equities of various matters and when, as in this case, these equities weighed heavily in favor of an aggrieved party, this Commission waived the technical requirements of regulations to achieve a just outcome. *In re Shawnee Library System*, 17 FCC Rcd 11824, 11829 on January 25, 2002; *In re Folsom Cordova United School District*, 16 FCC Rcd 20215, 20220 on November 13, 2001. In order to avoid an unwarranted hardship to ICM and to achieve a just result, the Commission should issue a waiver with respect to the FRNs in issue and the competitive bid rules. On the equity considerations alone, the commitment adjustment results should be cancelled and all FRNs reinstated in full.

2. Subsequent to the filing of ICM's Appeal on May 12, 2004, but prior to the Administrator's Decision on Appeal issued on November 16, 2004, the Federal Communication Commission ("FCC") adopted *In re Federal-State Joint Board on Universal Service*, 19 FCC Rcd 15252 on July 23, 2004 [hereinafter *In re Federal-State*]. A copy of that decision is annexed hereto as Enclosure 3.

This decision, issued by the FCC in response to petitions by various providers, directed the USAC to re-direct its efforts to recover any funds that had been allegedly distributed unlawfully from the providers to the party or parties who have committed the statutory or rule violation in question.

The FCC further stated with respect to the "party or parties who have committed the statutory or rule violation" that:

"We do so recognizing that in many instances, this will likely be the school or library, rather than the service provider." *In re Federal-State*, 19 FCC Rcd at par. 10.

In reaching this conclusion, the FCC noted that:

The school or library is the entity that undertakes the various necessary steps in the application process, and receives the direct benefit of any services rendered. The school or library submits to USAC a completed FCC Form 470, setting forth its technological needs and the services for which it seeks discounts. The school or library is required to comply with the Commission's competitive bidding requirements as set forth in Sections 54.504 and 54.511(a) of our rules and related orders. The school or the library is the entity that submits FCC Form 471, notifying the Administrator of the services that have been ordered, the service providers with whom it has entered into agreements, and an estimate of the funds needed to cover the discounts to be provided on eligible services.

Id. at par. 11.

It further went on to discuss that the service providers also have to follow the rules and regulations, but those are with regard to

the supported service, and as such, must provide the services approved for funding within the relevant funding year. The service provider is required under our rules to provide beneficiaries a choice of payment method, and, when the beneficiary has made full payment for the services, to remit discount amounts to the beneficiary within twenty days of receipt of the reimbursement check. But in many situations, the service provider simply is not in a position to ensure that all applicable statutory and regulatory requirements have been met. Indeed, in many instances, a service provider may well be totally unaware of any violation. In such cases, we are convinced that it is both unrealistic and inequitable to seek recovery solely from the service provider. (Emphasis added)

Id. at par. 11.

Letter of Appeal
Federal Communications Commission
Office of the Secretary
January 7, 2005
Page 8

Finally, with respect to the applicability of the decision to other cases, the FCC stated that:

“[t]his revised recovery approach shall apply on a going forward basis to all matters for which the USAC has not yet issued a demand letter as of the effective date of this order, and to all recovery actions currently under appeal to either USAC or this agency.” *Id.* at par. 10.

Applying this language and this directive of the FCC to the case at hand and the Commitment Adjustment Letter, and the Administrator's Decision on Appeal dated November 16, 2004, it is clear that ICM had absolutely nothing to do with the original application process and, as such, it is merely a provider that needs to uphold the provider's obligations as delineated above by the FCC. It is the Kearny Christian Academy who was the applicant and who obtained these grants and, therefore, was the entity that needed to comply with all the rules and regulations concerning the application process and, as such, it is that School to whom the Schools and Library Division must look to first to recover any funding that may have been granted in violation of any statute, regulation or rule. Based upon this decision, the FCC has conclusively decided the issue presented in this appeal and has held that the USAC should proceed against the wrongdoing applicant to recover any questionable payments and not the innocent provider.

CONCLUSION

For the reasons set forth above, ICM hereby requests that the relief requested in this appeal be granted and the finding as contained in Universal Service Administrative Company's letter of March 16, 2004 be reversed and that all commitment amounts be reinstated in full.

As noted in ICM's earlier appeal, most of the efforts ICM has expended under the aforesaid FRNs were labor hours, internet and telephone charges, cabling and other non-recoverable items, therefore, the rescission of the FRNs would be a disastrous and an unusually severe hardship on this small business that would effectively terminate ICM's ability to continue as a viable entity. If these commitment adjustments are allowed to remain, not only would the management of ICM lose their investment, 15 employees would lose their jobs and a large number of local businesses that rely on ICM could also be adversely affected. This would occur all because of some very serious deficient findings of fact, unsubstantiated conclusions, and disregard of the applicable law. Both the law and the equity of this situation require this Commission to uphold this appeal and reinstate all the commitments at issue in full.

If you have any further questions concerning this matter, please contact the undersigned at the address and telephone number indicated above, or our attorney, Gary Marcus, of the law

Letter of Appeal
Federal Communications Commission
Office of the Secretary
January 7, 2005
Page 9

firm of Goldberg & Connolly, 66 North Village Avenue, Rockville Centre, NY 11570, telephone
No. 516-764-2800, fax No. 516-764-2827, e-mail gmarcus@goldbergconnolly.com.

Very truly yours,

INDEPENDENT COMPUTER MAINTENANCE, LLC

By: 

Anthony Natoli, President

Enclosure E